



Thirteenth Programme of Law Reform consultation response

Please answer as many of these questions as you can, as fully as you can. If necessary, continue on additional sheets. Please also indicate where you are not able to provide an answer.

Please tell us about yourself:

Name: Andrea Williams

Address: 70 Wimpole Street, London, W1G
8AX

Email: andrea.williams@christianconcern.
com

Tel: 020 3327 1120

(Please tick one or more box)

Member of the public

Third sector/voluntary sector

Commercial sector/business

Nature of third sector/business organisation: Christian Concern

Practising lawyer

Academic

Specialist area:

Specialist area:

Member of the judiciary

Government official

Court or tribunal:

Department:

Local authority staff member

Parliamentarian

Other (please state):

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

We treat all responses as public documents in accordance with the **Freedom of Information Act** and we may include the names of respondents and attribute comments in any publication relating to this consultation. If you want your submission to remain confidential, you should contact us before sending your response. (Please note that we disregard automatic IT-generated confidentiality statements.)

1. Which of the Law Commission's project suggestions do you wish to comment on?

Surrogacy

2. Can you give an example of how the issue highlighted causes problems in practice?

For example, if you are a solicitor or barrister, you might describe how the issue affects your clients.

Considering the issue first from the perspective of the child, surrogacy deprives a child of its family of origin and legal parentage to satisfy the desire of adults. This violates the child's right to know their origin and identity, as guaranteed by Article 7(1) UN Convention on the Rights of the Child¹, as well as the Parliamentary Assembly of the Council of Europe in Recommendation 1443(2000) on International Adoption, which stated that 'all children have...the right to know and be brought up by their parents in so far as this is possible².' It also raises serious issues, including how a child makes sense of an egg donor and surrogate mother who did not want them; and what 'mother' means when the child has a genetic mother and a separate birth mother. The child's knowledge of their biological heritage is hugely significant, and thus something valuable is lost when they are deprived of their genetic link, and their origin is potentially hidden.

Surrogacy also undermines the dignity of children born via this method, as it encourages them to be viewed as a material product to fulfil a consumer demand, rather than as an individual with inherent dignity. This commodification of human life infringes the child's inviolable right to human dignity, as protected by the Charter of Fundamental Rights, Article 1³. Furthermore, the fact that surrogacy agreements are made before the child's conception is contrary to the dignity of the child and to PACE Recommendation 1443 (2000), which denounces "the conceiving of children for adoption"⁴.

Just as the child has inherent dignity, so does the would-be surrogate mother. She is not a commodity to be objectified or exploited. Through using her body and reproductive functions as an instrument in the service of others' purposes, surrogacy violates her human dignity by

¹ Article 7(1), UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577

² Parliamentary Assembly, 'International adoption: respecting children's rights' (26 January 2000) Recommendation 1443, para 1

³ Article 1, European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

⁴ Parliamentary Assembly, 'International adoption: respecting children's rights' (26 January 2000) Recommendation 1443, para 2

treating her as a means to an end.

The European Parliament recognised this problem, as in December 2015 they decided to “condemn the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity”, and to “consider that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments”⁵. It must be remembered that a mother’s womb is not an arbitrary location, but is recognised by medical practitioners as a vitally important space where a natural bond of love and security is formed. Yet surrogacy disregards this, as it assumes that the mother is able and willing to easily give up the child she nurtured for nine months. Sadly, the infamous “Baby M”⁶ case is an example of this, in which the mother changed her mind and was forced, in tears, to hand over her baby.

Whilst proponents of surrogacy often argue that pregnancy is safe and that the women involved suffer from no additional health risks, this is not the case. Research by the Center for Bioethics and Culture⁷ shows that surrogacy carries risks for the surrogate mother which are not present in natural pregnancy, including, inter alia, chronic pelvic pain, ovarian torsion, loss of fertility, reproductive cancers, blood clots, kidney disease, and, in the recent case of the American surrogate mother, death.

3. What priority should we give to this issue compared with the other issues we have identified, and any other law reform proposals you have made?

As surrogacy arrangements undermine the inviolable right to human dignity, which the European Court in *Pretty v. the United Kingdom*⁸ affirmed to be the essence of the Charter of Fundamental Rights, priority should be given to tightening the law.

4. Please tell us about any court/tribunal cases, legislation or journal articles that relate to the problem we have identified.

You may be able to tell us the name of the particular Act or a case that relates to the problem.

Article 7(1) UN Convention on the Rights of the Child - 'The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.'⁹

Article 1, Charter of Fundamental Rights – ‘Human dignity is inviolable. It must be

⁵ European Union: European Parliament, *European Parliament resolution on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union’s policy on the matter*, 17 December 2015, 2015/2229(INI), para 115

⁶ C Haberman, ‘Baby M and the Question of Surrogate Motherhood’, *New York Times*, 23 March 2014, <http://www.nytimes.com/2014/03/24/us/baby-m-and-the-question-of-surrogate-motherhood.html?_r=0> (accessed 20 October 2016)

⁷ The Centre for Bioethics and Culture Research, ‘What’s Wrong with Third Party Assisted Reproduction?’ <<http://www.cbc-network.org/wp-content/uploads/2011/05/What%E2%80%99s-Wrong-with-Third-Party-Assisted-Reproduction-Center-for-Bioethics-and-Culture.pdf>> (accessed 21 October 2016)

⁸ *Pretty v the United Kingdom* (App no 2346/02) ECHR 29 April 2002

⁹ Article 7(1), UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577

respected and protected.¹⁰

Parliamentary Assembly of the Council of Europe in Recommendation 1443(2000) - 'all children have rights, as set out in United Nations Convention on the Rights of the Child, and in particular, the right to know and be brought up by their parents in so far as this is possible.'¹¹

Parliamentary Assembly of the Council of Europe in Recommendation 1443(2000) - 'It roundly condemns all crimes committed in order to facilitate adoption, as well as the...conceiving of children for adoption.'¹²

Article 21, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine - 'The human body and its parts shall not, as such, give rise to financial gain'¹³.'

5. Can you give us information about how the issue is approached in other legal systems?

You might have some information about how overseas courts or tribunals approach the problem.

Many European countries including Germany, Austria, France, Switzerland, Sweden, Norway, Italy and Bulgaria have recognised the problem and thus completely prohibit all surrogacy arrangements. The UK's laws should be amended to reflect the approach taken in these jurisdictions.

The European Parliament also recognised the issue, as in December 2015 they decided to "condemn the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity". The practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments"¹⁴. This decision was supported by the Council of Europe's recent vote against the practice of all forms of surrogacy¹⁵.

6. Within the United Kingdom, does the problem occur in any or all of England, Wales, Scotland or Northern Ireland?

Yes, as the laws regarding surrogacy are harmonised through the United Kingdom.

7. What do you think needs to be done to solve the problem?

To uphold the dignity of women and children, and to maintain consistency with the principles embodied in international and European law, as well as decisions of the ECtHR, the UK's laws

¹⁰ Article 1, European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

¹¹ Parliamentary Assembly, 'International adoption: respecting children's rights' (26 January 2000) Recommendation 1443, para 1

¹² Ibid, para 2

¹³ Article 21, Convention on Human Rights and Biomedicine, 4 April 1997 (ETS No 164)

¹⁴ European Union: European Parliament, European Parliament resolution on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter, 17 December 2015, 2015/2229(INI), para 115

¹⁵ Parliamentary Assembly, 'PACE rejects draft recommendation on 'Children's rights related to surrogacy'', 11 October 2016 <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=6355&lang=2>> (accessed 24 October 2016)

on surrogacy need to be changed to outlaw the practice.

8. What is the scale of the problem?

This might include information about the number of people affected this year or the number of cases which were heard in a court or tribunal over a particular period.

Unfortunately, reliable data does not currently exist on the number of people from the UK undertaking surrogacy arrangements. However, the problem is vast as surrogacy has generated a multi-billion dollar industry worldwide.

9. What would be the benefits of reform? In particular, can you identify any:

- **economic benefits (costs of the problem that would be saved by reform); or**
- **other benefits, such as societal or environmental benefits?**

For example, if the problem is one which must usually be resolved in court, court fees might be payable; this money might be saved if the problem was reformed. If it involves consulting a solicitor or barrister, legal costs might be relevant. Or, if the problem was one which caused significant costs to businesses, you might be able to tell us how much time or money businesses would save.

Outlawing surrogacy would mark a positive step towards upholding the child's dignity and placing their interests centre-stage. The child would benefit significantly from knowing its biological family, and would not have to grapple with difficult questions such as how to make sense of an egg donor and surrogate mother who did not want them. It would also send an important message that children are not a commodity, but rather a unique individual whose life should be accorded the utmost respect by law.

Prohibiting surrogacy would also uphold the would-be-surrogate-mother's human dignity, and communicate that her body and reproductive functions are not to be used in the service of others' purposes. The women would also be protected against the numerous health risks which are present in surrogacy.

10. If this area of the law is reformed, can you identify what the costs of reform might be?

The costs of reform might include, for example, the cost of the legal profession and judiciary undertaking training to learn about a new statute.

Although we appreciate that reforming the law would incur costs, we strongly believe that cost issues are largely insignificant when weighed against the importance of upholding human dignity and protecting life.

11. Does the problem affect certain groups in society, or particular areas of the country, more than others? If so, what are those groups or areas?

As an example, if the law relates to agricultural land, it might affect farmers and their families more than the general population.

As surrogacy arrangements often depend on the exploitation of poorer women, it usually has the greatest impact on woman of a lower economic standing, whose body may be commissioned by an affluent couple. Another group affected by surrogacy is the innocent child, who is separated from its mother and has to grapple with difficult questions about its identity.

12. In your view, why is the Law Commission the appropriate body to undertake this work, as opposed to, for example, a Government department, Parliamentary committee, or a non-Governmental organisation?

As a legal issue which urgently needs reviewing, we are grateful to the Law Commission for undertaking this task. We believe that the Law Commission's extensive experience in considering proposals for law reform mean that it is better placed than Government departments to consider how the law can be altered.

13. Have you been in touch with any part of the Government (either central or local) about this problem? What did they say?

N/A

14. Is any other organisation such as the Government or a non-Governmental group currently considering this problem? Have they considered it recently? If so, please give us the details of their investigation of this issue, and why you think the Law Commission should also look into the problem.

N/A

Thank you for your response.
Please send it to us, by **31 October 2016**, to:
13th Programme Project Officer
Law Commission
1st floor, Tower, post point 1.55,
52 Queen Anne's Gate, London SW1H 9AG
Tel: 020 3334 3858 Fax: 020 3334 0201
Email: programme@lawcommission.gsi.gov.uk

We would like to know more about what our stakeholders think of the Law Commission and our work, and hear your thoughts on what we might change or improve. If you would be willing to take part in a short survey, please would you give us your email address: